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2008 OCT 14 AM 11:28 BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

STATE OF IDAHO  
DEPT. OF FINANCE

OF THE STATE OF IDAHO

In the matter of: ) Docket No.: 2008-7-10  
STATE OF IDAHO, Department of Finance, )  
Securities Bureau, )  
Complainant, )  
vs. )  
PAUL HORTON SMITH, SR., )  
Respondent )

**AGREEMENT AND ORDER**

The Director of the Department of Finance ("Director") has instituted an investigation into the conduct of PAUL HORTON SMITH, SR. ("Respondent"). Pursuant to the investigation it appears to the Director that violations of the Idaho Uniform Securities Act (2004), Idaho Code 30-14-101 *et seq.* have occurred. The Director and Respondent have agreed to resolve this matter without a public hearing or other adjudication. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. The Respondent consents to the entry of this Agreement and Order.

**I.**

**FINDINGS OF FACT**

1. Respondent is a resident of California and is and was at all times since August 22, 2007, a registered investment advisor representative, CRD# 2387799, of Brookstone Capital Management, LLC, ("Brookstone") IARD# 141413, a SEC registered investment advisor.

2. Respondent is and was at all times at least since July 11, 2007, the owner, president, and chief compliance officer of EGATE, LLC ("EGATE"), IARD# 143317, an investment advisor registered in California.

1           3.     Respondent is and was at all times since February 8, 2008, also a registered  
2 investment advisor representative of EGATE.

3           4.     On July 27, 2000, the Director issued a cease and desist order (the "Order")  
4 against Respondent relating to a series of free seminars presented by Respondent in the state of  
5 Idaho at which Respondent offered for sale three separate investments: viatical settlements, a  
6 passive investment in a pay phone scheme involving a management company known as  
7 PAYSTAR, and a passive investment in a technology company called GTI. In the Order, the  
8 Director found that:

9               a.     Respondent offered for sale securities that were not registered in the state  
10 of Idaho in violation of Idaho Code §30-1416,

11              b.     Respondent solicited securities clients at a time that he was not registered  
12 in violation of Idaho Code §30-1406, and

13              c.     Respondent offered securities for sale in a manner that violated the anti-  
14 fraud provisions of the Idaho Code §30-1403(2).

15           5.     Respondent was served with the Order by certified mail on July 28, 2000, and  
16 signed for the receipt of the Order on August 2, 2000. The Department received Respondent's  
17 payment of the \$1,000 civil penalty on October 27<sup>th</sup>, 2000, with a cover letter signed by  
18 Respondent.

19           6.     On July 7, 2008, Brookstone filed a form U4 with the Department through the  
20 CRD system to register Respondent in the state of Idaho as an investment advisor representative.

21           7.     Respondent's form U4 contained several statements that were false or misleading  
22 in a material respect. These statements are summarized below.

23               a.     On form U4, question 14(D)(1)(a) asks whether any state regulatory  
24 agency has found that the applicant made a false statement or omission or been dishonest,  
25 unfair or unethical. Respondent represented that he had not, when in fact Respondent is

1 the subject of the Order finding that Respondent misrepresented material facts and  
2 omitted to disclose material facts in violation of the anti-fraud provisions of the Idaho  
3 Securities Act.

4 b. On form U4, question 14(D)(1)(b) asks whether any state regulatory  
5 agency has ever found the applicant to have been involved in a violation of investment-  
6 related regulation(s) or statute(s). Respondent represented that he had not, when in fact  
7 Respondent is the subject of the Order finding that Respondent violated three sections of  
8 the Idaho Securities Act.

9 c. On form U4, question 14(D)(1)(d) asks whether any state regulatory  
10 agency has ever entered a order against the applicant in connection with an investment-  
11 related activity. Respondent represented that he had not, when in fact Respondent is the  
12 subject of the Order finding that Respondent violated of the Idaho Securities Act in  
13 connection with the offer of three separate investments.

14 d. On form U4, question 14(D)(2)(b) asks whether the applicant has ever  
15 been the subject to any final order of a state securities commission (or any agency or  
16 officer performing like functions), that constitutes a final order based on violations of any  
17 laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.  
18 Respondent represented that he had not, when in fact Respondent is the subject of the  
19 Order finding that Respondent violated the anti-fraud provisions of the Idaho Securities  
20 Act.

21 8. Respondent was aware of the Order at the time the form U4 was filed with the  
22 Department of Finance.

23 9. Respondent is responsible for the accuracy and truthfulness of the information  
24 and affirmations contained in his form U4.



3. Respondent violated I.C. § 30-14-505 by making or causing to be made, in a record filed under chapter 14 of the Idaho Code, statements that are false or misleading in a material respect.

## IV

## REMEDIES

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's agreement to the entry of the agreement and order, the Director finds that the following remedies are appropriate and in the public interest:

1. Respondent agrees to permanently cease and desist from violating the Idaho Uniform Securities Act (2004) and agrees to comply with the provisions of the Idaho Uniform Securities Act (2004) and rules promulgated thereunder in the future.

2. Respondent agrees to withdraw his application for registration as an investment advisor representative within ten (10) days of the date of this order.

3. Respondent agrees to not, now or in the future, provide any investment advice or sell securities in or from Idaho unless registered as a securities broker-dealer, agent, investment advisor, or investment advisor representative to the state of Idaho.

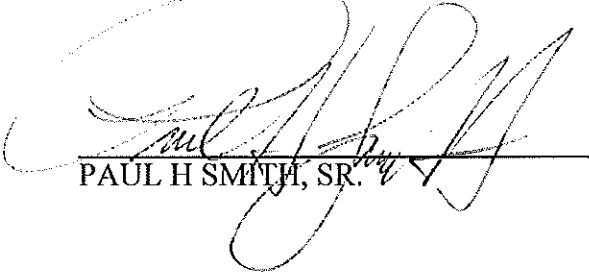
4. Respondent agrees not to apply for registration as a securities broker-dealer, agent, investment advisor, or investment advisor representative to the state of Idaho for at least ten (10) years from the date of this order.

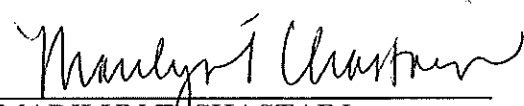
5. Respondent agrees to pay a civil penalty in the amount of \$2,500 and investigative costs in the amount of \$500. Payment shall be made payable to the order of the "Idaho Department of Finance."

6. Respondent agrees that his failure to comply with this order will result in the Director bringing further legal proceedings against him.

## AGREEMENT AND ORDER

Dated this 2 day of OCT, 2008

  
PAUL H SMITH, SR.

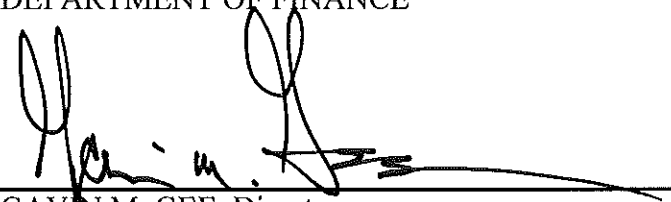
  
MARILYN T. CHASTAIN  
Bureau Chief, Securities Bureau  
Department of Finance  
State of Idaho

IT IS SO ORDERED

DATED this 13<sup>TH</sup> Day of NOVEMBER, 2008.



STATE OF IDAHO  
DEPARTMENT OF FINANCE

  
GAVIN M. GEE, Director

AGREEMENT AND ORDER